

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

MARIA DALBOTTEN,

Plaintiff,

vs.

C.R. BARD, INC. and BARD  
PERIPHERAL VASCULAR, INC.,

Defendants.

CV 20-34-BLG-SPW

ORDER

The parties have submitted a number of deposition excerpts in advance of trial. This order sets forth the Court's ruling on a portion of these objections in those excerpts. Additional orders ruling on the remaining objections will follow.

**I. Recovery Filter Evidence**

The parties will see that the Court has sustained the Defendants' objections to evidence regarding the Recovery Filter, based on Federal Rules of Evidence 401, 402, and 403.

Particularly in the Ciavarella deposition, Plaintiff generally asserts that she should be allowed to put on evidence about issues with the Recovery Filter (the G2's predecessor), arguing that this evidence is relevant to Defendants' choices/decisions in putting the G2 Filter on the market. Plaintiff asserts that Defendants relied on Recovery Filter testing when evaluating the G2 Filter, and that the jury needs to

understand the Recovery Filter to understand the G2 Filter. Defendants respond that this issue was fully addressed in a previous order (Doc. 293).

Plaintiff relies primarily on Judge Campbell's order in the MDL case, specifically, as filed in this case, Doc. 15, pages 24-28, wherein Judge Campbell denied Defendants' motion in limine seeking to bar Recovery Filter evidence. Judge Campbell reasoned, basically, that because the Recovery Filter was the predicate device for the G2, and given the 510(k) process with the FDA, that evidence regarding the Recovery Filter was relevant and admissible. The parties will recall that Judge Campbell was applying Georgia law.

This Court addressed this issue in its previous order. (Doc. 293).

Defendants responded to this issue in their Supplemental Statement Regarding Deposition Designation Objections and Responses. (Doc. 314). If it wasn't clear in the Court's previous order (Doc. 293), the Court recognizes that the Recovery Filter served as the predicate device for the G2 Filter, and that the Court has ruled that evidence regarding 510(k) clearance of the G2 Filter is admissible (Doc. 296). But the Court agrees with Defendants that "the jury can be presented with basic background information about the Recovery Filter without being inundated with voluminous evidence and testimony about Recovery Filter complications (including in particular the unduly prejudicial focus on Recovery deaths, . . . ) and Recovery Filter testing. . . ." (Doc. 314, at 6-7). The Court finds that emphasizing the Recovery Filter and

turning the trial into a mini-trial of the Recovery Filter would be a waste of time and incredibly confusing to the jury. Fed. R. Evid. 403.

## **II. Rule 602 Objections**

The parties will see that the Court has sustained the Defendants' objections based on Fed. R. Evid. 602, which requires that a witness have personal knowledge of the matter about which they are being asked to testify. Judge Campbell also sustained Defendants' Rule 602 objections in the MDL case. (MDL Dkt. No. 10403).

Plaintiff asserts that the fact that the witness has not seen the document before may in and of itself be relevant to the issues. The Court agrees with this as far as it goes. However, a witness cannot then be asked questions about the document that simply amount to counsel reading the document to the witness and asking whether he has read the document correctly. In that instance, counsel is testifying. The point of the rule is to improve the reliability of the evidence admitted at trial by requiring the witness to testify as to their own personal knowledge.

## **III. Rulings**

### **A. David Ciavarella Deposition – November 12, 2013**

1. 96:09-97:01 – overruled
2. 97:04-97:04 – overruled
3. 175:10-175:12 – overruled
4. 176:02-176:08 – sustained – relevancy, discussing the Recovery filter

5. 179:16-179:25 – sustained – relevancy, discussing the Recovery filter
6. 179:16-180:01 – sustained – relevancy, discussing the Recovery filter
7. 180:11-180:25 – sustained – relevancy, discussing the Recovery filter
8. 180:15-180:21 – sustained – relevancy, discussing the Recovery filter
9. 182:22-183:08 – sustained, Foundation, F.R. Evid. 602
10. 183:04-183:05 – sustained, Foundation, F.R. Evid. 602
11. 184:15-184:24 – sustained, Foundation, F.R. Evid. 602
12. 184:21-185:11 – sustained, Foundation, F.R. Evid. 602
13. 247:15-247:20 – sustained, relevancy, speculation
14. 247:22-247:23 – sustained, relevancy, speculation
15. 250:02-250:05 – sustained – relevancy, Recovery filter
16. 250:07 – sustained, relevancy, Recovery filter
17. 250:09-250:12 – sustained, relevancy, Recovery filter
18. 250:14-250:15 – sustained, relevancy, recover filter
19. 279:05-279:12 – overruled
20. 279:12-279:16 – overruled
21. 283:20-284:03 – overruled
22. 284:24-285:04 – designation withdrawn by Plaintiff
23. 288:08-288:14 – sustained, Foundation, F.R. Evid. 602
24. 293:11-293:23 – overruled

25. 294:02-294:16 – sustained, Foundation, F.R. Evid. 602
26. 294:18-294:20 – sustained, F.R. Evid. 602 and 802
27. 351:16-351:20 – sustained, relevancy Recovery filter
28. 352:01-352:04 – sustained, relevancy, Recovery filter
29. 353:10-353:14 – sustained, relevancy, Recovery filter
30. 353:22-354:03 – sustained, relevancy, Recovery filter
31. 354:18-356:11 – sustained, relevancy, Recovery filter
32. 356:20-357:03 – sustained, relevancy, Recovery filter
33. 357:04-357:23 – sustained, relevancy, Recovery filter
34. 358:22-359:01 – sustained, relevancy, Recovery filter
35. 359:07-359:13 – sustained, for the reasons stated in the objection
36. 359:14-359:20 – sustained, relevancy, Recovery filter
37. 362:06-363:16 – sustained, relevancy, Recovery filter
38. 371:14-372:03 – sustained, for reasons stated in the objection
39. 372:05 – sustained, for reasons stated in the objection
40. 372:24-373:13 – sustained, for reasons stated in the objection
41. 373:19-374:06 – sustained, for reasons stated in the objection
42. 375:21-377:01 – sustained, for reasons stated in the objection
43. 377:04-377:11 – sustained, for reasons stated in the objection

B. David Cavarella Deposition – July 29, 2014

1. 46:12-46:17 – sustained, relevancy
2. 53:17-54:03 – sustained, relevancy
3. 54:05-54:11 – sustained, relevancy
4. 58:05-59:18 – sustained, relevancy
5. 65:25-66:01 – sustained, relevancy
6. 66:05-66:05 – sustained, relevancy
7. 66:17-66:19 – sustained, relevancy
8. 67:18-68:04 – sustained, relevancy
9. 68:11-68:25 – sustained, relevancy
10. 70:10-70:18 – sustained, relevancy
11. 72:08-73:04 – sustained, relevancy
12. 74:08-74:17 – sustained, relevancy
13. 74:23-75:02 – sustained, relevancy
14. 75:09-75:13 – sustained, relevancy
15. 75:15-75:21 – sustained, relevancy
16. 75:22-76:02 – sustained, relevancy
17. 80:16-82:02 – sustained, relevancy
18. 91:11-92:07 – sustained, relevancy
19. 92:09-93:06 – sustained, relevancy
20. 94:08-94:12 – sustained, relevancy

21. 98:02-98:07 – sustained, relevancy
22. 98:18-98:23 – sustained, relevancy
23. 99:10-100:01 – sustained, relevancy
24. 101:21-101:24 – sustained, relevancy
25. 114:13-114:19 – sustained, relevancy
26. 168:12-170:06 – sustained, relevancy
27. 170:15-170:21 – sustained, relevancy
28. 170:22-170:22 – sustained, relevancy
29. 171:15-171:25 – sustained, relevancy

C. Christopher Ganser Deposition – October 11, 2016

1. 43:04-43:22 – sustained, relevancy
2. 51:10-51:15 – overruled
3. 51:21-53:07 – overruled
4. 54:15-54:24 – sustained, relevancy
5. 55:01-55:10 – sustained because the objection to 54:15-54:24 was sustained
6. 55:14-55:21 – sustained, relevancy
7. 65:15-65:17 – sustained
8. 66:18-67:07 – overruled
9. 67:19-68:06 – sustained, relevancy

10. 68:22-69:06 – sustained, relevancy
11. 69:09-69:10 – sustained, relevancy
12. 69:21-71:01 – sustained, for the reasons stated in the objection
13. 85:21-86:13 – sustained, hearsay
14. 86:16-86:18 - sustained, hearsay
15. 86:24-87:10 – sustained hearsay
16. 93:20-94:02 – overruled
17. 94:21-96:11 – overruled
18. 106:03-107:04 – overruled
19. 107:11-107:14 – overruled
20. 121:12-122:02 – overruled
21. 122:04-123:18 – sustained, risk benefit analysis is irrelevant
22. 123:19-124:10 – sustained, relevancy
23. 129:09-129:14 – sustained, relevancy
24. 129:17-130:02 – sustained, relevancy
25. 133:09-133:23 – sustained, relevancy
26. 140:19-140:22 – sustained, foundation, speculation
27. 141:03-141:04 – sustained, foundation, speculation
28. 141:11-141:15 – sustained, foundation, speculation
29. 153:15-154:10 – sustained, relevancy, confusion, Recovery filter

30. 155:14-156:01 – sustained, relevancy, confusion, Recovery filter
31. 157:19-158:20 – sustained, relevancy, confusion, Recovery filter
32. 159:03-159:16 – sustained, relevancy, confusion, Recovery filter
33. 159:18-159:22 – sustained, relevancy, confusion, Recovery filter
34. 215:23-216:07 – overruled
35. 222:09-222:18 – sustained, relevancy, confusion, Recovery filter
36. 223:10-223:15 – sustained, relevancy, confusion, Recovery filter
37. 228:13-228:23 – overruled
38. 254:02-254:08 – sustained, relevancy, Recovery filter
39. 254:17-254:20 – sustained, relevancy, Recovery filter
40. 255:21-256:11 – sustained, relevancy, Recovery filter
41. 258:16-259:01 – sustained, relevancy, Recovery filter
42. 259:02-259:04 – sustained, this is Defendants’ counter designation to  
the Plaintiff’s previous designation, the objection to which the Court  
has sustained
43. 259:05-259:11 – sustained, relevancy, Recovery filter
44. 260:14-260:15 – sustained, relevancy, Recovery filter
45. 260:18-260:22 – sustained, relevancy, Recovery filter
46. 261:01 – sustained, relevancy, Recovery filter
47. 261:03-261:04 – sustained, relevancy, Recovery filter

48. 264:21-264:24 – sustained, relevancy, Recovery filter
49. 266:03-266:05 – sustained, relevancy, Recovery filter
50. 267:19-267:21 – sustained, relevancy, Recovery filter
51. 267:23-267:24 – sustained, relevancy, Recovery filter
52. 268:04-269:03 – sustained, relevancy, Recovery filter
53. 269:04-269:05 – sustained, relevancy, Recovery filter
54. 272:07-272:10 – sustained, relevancy, Recovery filter
55. 272:14-272:15 – sustained, relevancy, Recovery filter
56. 274:04-274:10 – sustained, foundation
57. 275:02-275:08 – sustained, relevancy, Recovery filter
58. 280:12-280:14 – sustained, relevancy, Recovery filter
59. 280:16-280:17 – sustained, relevancy, Recovery filter
60. 280:21-281:02 – sustained, relevancy, Recovery filter
61. 281:04-281:05 – sustained, relevancy, Recovery filter
62. 298:03-298:04 - sustain, lack of foundation
63. 299:01-299:06 – sustain, lack of foundation
64. 304:22-305:12 – sustained as to 305:10-12, otherwise, overruled
65. 305:14-305:20 – overruled
66. 305:22-305:23 – overruled
67. 307:08-307:09 – overruled

68. 307:11-307:21 – overruled

69. 313:06-313:14 – overruled

70. 313:16 – overruled

71. 326:23-327:09 – overruled

72. 327:12-327:16 – overruled

73. 328:10-328:22 – sustained, relevancy, Recovery filter

74. 329:08-329:16 – sustained, relevancy, Recovery filter

75. 329:19-329:20 – sustained, relevancy, Recovery filter

76. 329:23-330:03 – sustained, relevancy, Recovery filter

77. 330:05-330:06 – sustained, relevancy, Recovery filter

78. 330:08-330:16 – sustained, relevancy, Recovery filter

79. 330:20-331:02 – sustained, relevancy, Recovery filter

D. Janet Hudnall Deposition – November 1, 2013

1. 19:04-19:07 – sustained for reasons stated in the objection

2. 99:01-100:05 – sustained for reasons stated in the objection

3. 101:04-101:09 – sustained for reasons stated in the objection

4. 102:03-102:08 – sustained for reasons stated in the objection

5. 102:10-102:12 – sustained for reasons stated in the objection

6. 108:13-108:17 – sustained for reasons stated in the objection

7. 108:19-109:02 – sustained for reasons stated in the objection

8. 120:25-121:14 – overruled
9. 127:11-127:19 – overruled
10. 127:21-127:22 – overruled
11. 129:06-129:09 – overruled
12. 140:07-140:16 – overruled
13. 140:20-140:25 – sustained, relevancy, Recovery filter
14. 141:10-141:24 – sustained, relevancy, Recovery filter
15. 143:08-143:21 – sustained, relevancy, Recovery filter
16. 148:12-148:19 – sustained, relevancy, Recovery filter
17. 166:12-166:15 – overruled
18. 166:17 – overruled
19. 178:09-178:20 – sustained, relevancy, Recovery filter
20. 179:01-180:15 – sustained, relevancy, Recovery filter
21. 180:17 – sustained, relevancy, Recovery filter
22. 181:24-182:07 – sustained, relevancy, Recovery filter
23. 184:03-184:17 – sustained, relevancy, Recovery filter
24. 185:10-185:24 – sustained, relevancy, Recovery filter
25. 186:18-187:02 – sustained, relevancy, Recovery filter
26. 187:03-187:07 – sustained, relevancy, Recovery filter
27. 187:09 – sustained, relevancy, Recovery filter


28. 187:15-187:18 – sustained, relevancy, Recovery filter
29. 188:06-188:09 – sustained, relevancy, Recovery filter
30. 273:20-274:04 – overruled – counsel is asking generally, not specifically as to the Recovery filter
31. 296:09-296:19 – sustained, relevancy, Recovery filter
32. 296:21-297:07 – sustained, relevancy, Recovery filter
33. 297:09-297:18 – sustained, relevancy, Recovery filter
34. 298:15-299:07 – sustained, relevancy, Recovery filter
35. 299:10-299:15 – sustained, relevancy, Recovery filter
36. 316:09-316:16 – sustained, relevancy, Recovery filter
37. 316:19-317:09 – sustained, relevancy, Recovery filter
38. 317:11-317:13 – sustained, relevancy, Recovery filter
39. 318:02-318:06 – sustained, relevancy, Recovery filter
40. 318:07-318:09 – sustained, relevancy, Recovery filter
41. 324:12-324:19 – sustained, argumentative, relevancy, Recovery filter
42. 324:22-325:02 – sustained, argumentative, relevancy, Recovery filter
43. 325:10-325:13 – sustained, relevancy, argumentative
44. 339:20-339:25 - sustained, relevancy
45. 340:02 – sustained, relevancy
46. 340:03-340:08 – sustained, argumentative

47. 340:11 – sustained, argumentative
48. 358:24-359:04 – sustained, relevancy, Recovery filter
49. 359:06-359:13 – sustained, relevancy, Recovery filter
50. 359:16-359:18 – sustained, relevancy, Recovery filter
51. 359:20-360:08 – sustained, relevancy, Recovery filter
52. 360:10-360:12 – sustained, relevancy, Recovery filter
53. 360:14 – sustained, relevancy, Recovery filter
54. 361:06-361:11 – sustained, relevancy, Recovery filter
55. 361:13-361:14 – sustained, relevancy, Recovery filter
56. 361:17-361:22 – sustained, relevancy, Recovery filter
57. 376:17-377:21 – sustained, relevancy, Recovery filter
58. 377:22 – sustained, relevancy, Recovery filter
59. 381:05-381:09 – overruled
60. 382:01-382:02 – overruled
61. 382:05-382:12 – overruled
62. 383:04-383:09 – overruled
63. 385:01-385:13 – overruled
64. 386:15-386:21 – overruled
65. 389:07-389:07 – sustained, relevancy, Recovery filter

#### IV. Conclusion

The clerk is directed to notify counsel of the entry of this Order.

DATED this 21<sup>st</sup> day of February, 2023.

  
SUSAN P. WATTERS  
United States District Judge